

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1328 of 1986

with

CRIMINAL MISC.APPLICATION No 440 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA and
MR.JUSTICE H.L.GOKHALE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

MAGANBHAI JAISINGBHAI

Versus

STATE OF GUJ'

Appearance:

1. Criminal Appeal No. 1328 of 1986
Ms. Sudha Gangwar, for the petitioner.
PUBLIC PROSECUTOR for Respondent No. 1
2. Criminal Misc.ApplicationNo 440 of 1987
PUBLIC PROSECUTOR for Petitioner

CORAM : MR.JUSTICE N.J.PANDYA and
MR.JUSTICE H.L.GOKHALE

Date of decision: 17/01/97

ORAL JUDGEMENT

The accused appellant with two other accused came to be charged for the offence under sections 302, 323 read with section 34 of the Indian Penal Code and in the alternative, individually the accused-appellant came to be charged for the offences under sections 302, accused no. 1 under section 363 and likewise accused no. 3 also for the offence under section 323, IPC. There was a charge for offence under section 504, IPC also. The learned Sessions Judge, Panchmahals at Godhra by his judgment dated 20.2.86 was pleased to acquit the accused nos. 1 and 3 and was pleased to convict the accused-appellant, i.e. original accused no.2 for the offence under section 304 (2), IPC and awarded two years rigorous imprisonment.

2. It is with regard to that order of sentence that the enhancement application being Miscellaneous Criminal Application No. 440 of 1987 came to be filed because according to the State, if the accused is held guilty under section 304, IPC which apparently they are not challenging, but at least the sentence should have been awarded on higher side.

3. From the record, it is quite clear that the accused themselves had received injuries and so far as the appellant is concerned, as per the deposition of Dr. S.V.Sharma, p.w. 4 exh. 22, he had two injuries and for that he was examined on 26.3.86 at 12.30 p.m. The certificate with regard to his injury has also been produced at exh. 23. The acquitted accused-accused no. 3 had also received injury for which the certificate was produced at exh. 25. This would clearly indicate that there was a fight between two groups.

4. The background of the incident as could be gathered from the charge as well as from the deposition of the complainant p.w.2 Himmatsing Koyabhai exh. 16 page-65 was that at about 8.00 p.m. on the day of the incident, the accused no.1 was quarrelling with his mother outside the house of the witness. His father Koyabhai, the deceased was just coming out of the house and he tried to intervene with them saying that they should not quarrel on the festive occasion of Holi, but his intervention aggravated the situation further in which the present appellant came running on the scene and started throwing brickbats on the said Koyabhai. One of the brickbat had hit his head and he received serious

injuries and had fallen down on the ground.

5. Eventually, after three days as a result of these injuries, the deceased died at S.S.G.Hospital, Baroda. About cause of death, head injury is directly responsible as per the deposition of p.w. 1 as well as post mortem notes exh. 8.

6. P.w. 2 who is an eye witness claims that he has received injury and he was hit by one of the acquitted accused. However, he denies knowledge of injury upon any of the accused and has also repealed to justify of there being fight between two groups in which the accused party also received injuries. However, he had to admit that there was a dispute going on between two families and therefore, community leaders were called known as "Sitting Panchas" for which exh. 18 was got proved through him by the defence. This clearly establishes of relationship between the two families. He had to admit that at the instance of the accused party, a criminal case has been launched against the witness and his companions. Over and above two accused referred to already, there are other persons from the accused side who had received injuries. Of course, the witness denies the suggestion in this regard in para 7 of his cross-examination at page 67.

7. In this free for all fight if as held by the learned Sessions Judge, the accused has thrown brickbats, obviously no one particular was in his mind much less there could be an intention of causing injuries, to any particular person. It is therefore, obvious that the intention to cause death was totally absent. Causing of injury through brickbatting throw by the accused would hit was certainly there and therefore, in our opinion, the appeal against the order of conviction under section 304(2) deserves to be accepted. In its place, conviction is altered under section 323 of the Indian Penal Code.

8. With regard to the sentence, we agree with the learned A.P.P. Mr. Mehta that he should be suitably punished. But looking to the fact that the incident is of 25.3.86 and on 27.3.86, the accused was arrested and had remained behind bars upto 23.4.86, till he was released on bail, after almost a lapse of 10 years and more if we are to sentence him for any other longer period, in our opinion, the circumstances do not warrant the same. Looking to the passage of time, in our opinion, what he has undergone as an undertrial prisoner for the aforesaid period should be considered enough and

therefore, we do not pass any order of sentence.

9. The appeal is accordingly partly allowed.

Whatever period the appellant-accused has remained as an undertrial prisoner is considered enough by way of punishment. The bail bond of the accused shall stand cancelled.

10. Under the circumstances, obviously there is no question of enhancing sentence in any manner and therefore, the application filed by the State is dismissed.

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